

In the Iowa Supreme Court

**In the Matter of Adopting
Amendments to Iowa Court
Rules Regarding Death and
Disability Planning by Iowa
Attorneys**

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Order

CLERK SUPREME COURT

The supreme court adopts amendments to Iowa Court Rule 39.18, which requires all active practitioners in Iowa to have a written succession plan, in the event of death or disability, for their law practices. The court also adopts conforming amendments to rules 34.17(6) and 34.18(1).

The court originally adopted rule 39.18 on November 20, 2015. The court then held the implementation date in abeyance to allow The Iowa State Bar Association's Rule 39.18 Study Committee (ISBA committee) to study further the effects and consequences of the rule. The ISBA committee subsequently issued a report of recommended amendments to the rule.

On August 29, 2016, the supreme court submitted for public comment the ISBA committee report, a letter opposing the ISBA committee report, and the proposed rule amendments on succession planning. The court appreciates the comments it received. After consideration of the public comments and further consideration of the succession rule, the court finds that the proposed amendments to rule 39.18 are helpful to both members of the bar and to the court's administration of the practice of law. The court's office of professional regulation has advised the court that it will provide guidance for attorneys regarding implementation of and compliance with new rule 39.18.

The key provisions of rule 39.18, which will take effect for the 2018 annual report filing season, include the following:

- Two "tiers" of succession planning are created. The first tier is a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security

Commission. The designation would identify the assisting attorney, law firm (which could be the planning attorney's own firm, if the planning attorney is a member of a firm), or qualified attorney-servicing association. The designation also would identify where the planning attorney's records are located, including a current client list, and would authorize the assisting attorney or entity to perform tasks necessary to protect the interests of the planning attorney's clients. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect the clients' interests, and administering the planning attorney's trust account.

- The second tier of succession planning consists of an optional but encouraged written plan that the planning attorney creates. In the optional written plan, the planning attorney would provide further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.
- All attorneys in private practice are required to complete the first tier, mandatory short form designation as part of the annual client security questionnaire. If a planning attorney is a member of a law firm that includes other Iowa attorneys in good standing, the planning attorney may designate his or her own firm as the assisting law firm.
- Attorneys who are not in private practice in Iowa may indicate that professional status on the annual questionnaire and are not required to complete the remaining portion of the questionnaire pertaining to succession planning.
- The rule requires all attorneys in private practice to maintain a current client list.
- The rule authorizes the planning attorney's assisting attorney or entity to apply to the judicial district chief judge for an order confirming the death or disability of the planning attorney.
- A qualified attorney-servicing association is defined as a bar association all or part of whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Division of Banking.
- The amendments authorize the assisting attorney or entity to petition for appointment of a trustee under the provisions of rule 34.17 or 34.18, as applicable, if the assisting attorney or entity

believes it is beneficial to be court appointed as a trustee, or believes it is appropriate for the court to appoint an independent trustee. If the assisting attorney or entity applies for a trustee appointment under rule 34.17 or 34.18, the amendments require the judicial district chief judge to give due regard to any designation or standby nomination the planning attorney made under the provisions of rule 39.18.

- The Iowa Supreme Court Office of Professional Regulation will implement the new mandatory portion of the annual client security report in the 2018 reporting season.
- The court also adopts amendments conforming rules 34.17(6) (disability suspension) and rule 34.18(1) (death, suspension, or disbarment of practicing attorney) to amended rule 39.18.

The court adopts amendments to rules 34.17(6), 34.18(1), and 39.18 of the Iowa Court Rules as provided with this order.

The amendments will be effective December 25, 2017, and will apply to the entirety of the 2018 attorney annual report filing season.

Dated this 18th day of November, 2016.

The Iowa Supreme Court

By Mark S. Cady
Mark S. Cady, Chief Justice